IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC., Plaintiff	)	
v.	)	C.A. NO.: 03-394 E
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC., Defendants	)	ELECTRONICALLY FILED

ACCU-SPEC ELECTRONIC SERVICES, INC.'S MOTION FOR RECONSIDERATION OF CENTRAL TRANSPORT'S MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR CLARIFICATION OF COURT ORDER

Plaintiff Accu-Spec Electronic Services, Inc.'s ("Accu-Spec"), by its attorneys MacDonald, Illig, Jones & Britton LLP, files this Motion for Reconsideration of Central Transport's Motion for Summary Judgment and/or Motion for Clarification of Court Order pursuant to F.R.C.P. 59, stating the following in support:

A. PROCEDURAL BACKGROUND

1. On or about November 25, 2003, plaintiff Accu-Spec filed a Complaint against defendants Central Transport International, Inc. ("Central Transport") and Logistics Plus Inc. ("Logistics Plus") (collectively "Defendants"), alleging that the Defendants violated the Carmack Amendment, which is now codified at 49 U.S.C. § 14706, and the cargo loss and damage

regulations issued under the Motor Carrier Act pursuant to 49 U.S.C. § 14704 and 49 C.F.R. § 370.1 et seq. (Complaint, attached as Exhibit A; the exhibits to the Complaint have been omitted).

2. On or about October 13, 2004, Central Transport filed a Motion for Summary Judgment on both the causes of action brought pursuant to the Carmack Amendment (Count I) and the cargo loss and damage regulations (Count II).

3. Contemporaneously with the Motion for Summary Judgment, Central Transport filed a Concise Statement of Undisputed Material Facts and Memorandum of Law in support of its Motion for Summary Judgment. (Exhibit B).

4. On or about November 15, 2004, Accu-Spec filed a timely Responsive Concise Statement in Opposition to Central Transport's Motion for Summary Judgment and a Brief in Opposition thereto. (Exhibit C).

5. On or about November 15, 2004, defendant Logistics Plus filed a Brief in Opposition to Central Transport's Motion for Summary Judgment.

6. On or about December 8, 2004, this Honorable Court held oral argument on Central Transport's Motion for Summary Judgment. (The Opinion is attached as Exhibit D and the Order is attached as Exhibit E).

7. On or about August 17, 2005, this Honorable Court issued an Opinion and Order with respect to Central Transport's Motion for Summary Judgment.

8. In the Opinion issued by the Court, the Honorable Court appears to deny the Motion for Summary Judgment with respect to the Carmack Amendment (Count I) and grant the Motion for Summary Judgment with respect to the cargo loss and damage regulations (Count II). (Exhibit D).

9. In the Order which accompanied the Opinion, this Honorable Court appears to grant the Motion for Summary Judgment with respect to the Carmack Amendment (Count I) and deny the Motion for Summary Judgment with respect to the cargo loss and damage regulations (Count II). (Exhibit E).

B. EVEN IF THE COURT CONSIDERS A MOTION FOR SUMMARY JUDGMENT IS UNOPPOSED, THE COURT MUST DETERMINE WHETHER THE MOVING PARTY IS ENTITLED TO SUMMARY JUDGMENT

10. The only reason this Honorable Court gave in its Opinion for granting Central Transport's Motion for Summary Judgment with respect to the cargo loss and damage regulations was because Accu-Spec's Brief in Opposition did not oppose this argument. (Exhibit D, p. 9).

11. This Honorable Court's granting of Central Transport's Motion for Summary Judgment on this basis as to the cargo loss and damage claims was erroneous because the Third Circuit has held that, even if a Motion for Summary Judgment is unopposed, a trial court should not enter summary judgment in favor of the moving party unless the facts set forth in the motion entitle the moving party to judgment as a matter of law. Anchorage Associates v. Virgin Islands Board of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).

12. In reversing the trial court and remanding the matter for further consideration, the Third Circuit stated that, although Rule 56(e) requires a non-moving party to set forth specific facts showing that there is genuine issue for trial, it is well-settled that this does not mean that a moving party is automatically entitled to summary judgment if the opposing party does not respond. Id.

13. According to the Third Circuit, the trial court must first determine whether summary judgment is appropriate; that is whether the moving party has shown itself to be entitled to judgment as a matter of law. Id. citing Rule 56(e). See also Santiago v. City of Vineland, 107 F. Supp. 2d 512, 527 (D.N.J. 2000).

C. UPON RECONSIDERATION, CENTRAL TRANSPORT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED AS TO THE LOSS AND DAMAGE REGULATIONS

14. Upon reconsideration, Central Transport's Motion for Summary Judgment should be denied because the Motion was based upon the argument that no private cause of action exists under 49 U.S.C. § 14704. (Exhibit F, attaching relevant excerpt of Memorandum of Law in Support of Motion for Summary Judgment).

15. In making this argument, Central Transport did not cite any judicial opinions in support of its position.

16. At the time of briefing and oral argument, the parties did not have the benefit of the decision of the United States District Court for the District of Delaware in Crosby v. Landstar, 2005 U.S. Dist. Lexus 12008 (D. Del. June 21, 2005) (attached as Exhibit G).

17. Crosby held that, with the enactment of the ICC Termination Act, Congress disposed of the Interstate Commerce Commission and transferred its responsibilities to the Department of Transportation. Congress, however, did not transfer all of the responsibilities of the ICC to DOT. A section of the ICC Act allows commercial disputes, which had been administratively adjudicated by the ICC, to be brought into federal court. Exhibit G, p. 3, citing

H.R.Rep. No. 104-311, at 87-88 (1995), reprinted in 1995-2 U.S.C.C.A.N. 793, 799-800. (Emphasis added).

18. According to the Crosby Court, the ICC Act was intended to "permit...private, commercial disputes to be resolved the way that all other commercial disputes are resolved-by the parties. Section 14704, in particular, was intended to provide for private enforcement of the provisions of the Motor Carrier Act in court." Exhibit G, p. 3, citing Owner-Operator Independent Drivers' Association v. New Prime, Inc., 192 F.3d at 778, 785 (8th Cir. 1999).

19. At oral argument on December 8, 2004, counsel for Accu-Spec pointed out that the Eighth Circuit Court of Appeals has held that the legislative history to the ICC Termination Act contemplated that private parties may bring actions to enforce the Motor Carrier Act. Owner Operation Independent Drivers' Association, Inc., 192 F.3d at 787. (Exhibit H, pp. 21-22).

20. The New Prime Court recognized that the ICC Termination Act encompassed both the Truth-In-Lending regulations (applicable in that case) and the loss and damage regulations (applicable in the present case). Id., citing Committee Report.

21. Counsel for Accu-Spec also cited the New Prime case to this Honorable Court in its Supplemental Brief in Opposition to Central Transport's Motion for Summary Judgment filed on December 13, 2004. (Exhibit I).

22. In Crosby, the district court held that the plaintiff did not state a cause of action under Section 14704 because the plaintiff was seeking medical and legal costs as well as damage to his semi-truck. (Exhibit G, pp. 1-2).

23. In the present case, Count II of Accu-Spec's Complaint does state a cause of action because it alleges a violation of the Motor Carrier Act and its loss and damage regulations, 370 C.F.R § 370.1 et seq.

24. Furthermore, Central Transport did not prove that it is entitled to summary judgment on the loss and damage claims because none of the averments in Central Transport's Concise Statement of Undisputed Material Facts in Support of Motion for Summary Judgment pertained to Central Transport's handling of Accu-Spec's claim.

25. Instead, all of the allegedly undisputed material facts pertained to the contractual relationship between Accu-Spec, Central Transport and Logistics Plus and were applicable solely to Central Transport's Motion for Summary Judgment under the Carmack Amendment. (Exhibit B).

26. Central Transport's failure to designate undisputed material facts as to Count II of Accu-Spec's Complaint was in violation of Local Rule 56.1 which requires the moving party to file a Concise Statement of Facts which the party contends are undisputed and material. (Local Rule 56.1(B)(1)).

27. This is not a case in which Accu-Spec waived the rights to dispute Central Transport's assertion of undisputed material facts because Accu-Spec timely filed a complete Responsive Concise Statement in Opposition to Central Transport's Motion for Summary Judgment on November 15, 2004. (Exhibit C).

WHEREFORE, plaintiff Accu-Spec Electronic Services, Inc. respectfully requests this Honorable Court to:

1. Grant this Motion for Reconsideration of Central Transport's Motion for Summary Judgment as to Count II of Accu-Spec's Complaint; and

2. Upon reconsideration, deny Central Transport's Motion for Summary Judgment as to Count II of Accu-Spec's Complaint.

In the alternative, in the event that this Honorable Court decides not to grant reconsideration of its August 17, 2005 Opinion and Order, plaintiff Accu-Spec Electronic Services, Inc. respectfully requests this Honorable Court to correct its August 17, 2005 Order and issue a new Order which states that Central Transport's Motion for Summary Judgment is denied as to Count I of the Complaint and is granted as to Count II of the Complaint.

Respectfully submitted,

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